

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAIME GARCIA,
Petitioner

v.

RICHARD B. IVES,
Respondent.

Case No. 2:15-cv-4722-JFW (GJS)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE IN PART AND
DISMISSING UNEXHAUSTED
CLAIMS**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition and all pleadings, motions, and other documents filed in this action, and the Report and Recommendation of United States Magistrate Judge (“Report”). The deadline to file Objections to the Report has passed, and no Objections have been filed with the Court. The Court accepts the findings and recommendations set forth in the Report in part, as follows.

On August 19, 2015, the United States Magistrate Judge evaluated the First Amended Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and preliminarily concluded that the First Amended Petition included both exhausted and unexhausted claims. [Dkt. 11 (“Four Options Order”) at 1-2]. The Four Options Order also set forth Garcia’s options to respond to the Magistrate

1 Judge's initial determination, and set a deadline of September 18, 2015 to respond.
2 [*Id.* at 7.] As of September 29, 2015, Garcia had filed no response, and so the
3 United States Magistrate Judge issued the Report recommending that the First
4 Amended Petition be dismissed in its entirety because it was a mixed petition. [Dkt.
5 13]; *see Rose v. Lundy*, 102 S. Ct. 1198, 1203 (1982).

6 During the period for Garcia to file objections to the Report, he filed a motion for
7 extension of time to file his response to the Four Options Order and the response
8 itself. [Dkts. 14, 15 ("Response").] The Response indicated that Garcia wished to
9 select "option #2" to dismiss Claims 3 and 4—the claims the United States
10 Magistrate Judge preliminarily found to be unexhausted. [*Id.* at 1.]

11 The Court adopts the Report's recommendation that Claims 3 and 4 are
12 unexhausted, and thus, that the First Amended Petition is mixed. Because Garcia
13 filed a response seeking dismissal of only the unexhausted claims, the Court will
14 dismiss Claims 3 and 4 and permit Garcia to proceed on Claims 1 and 2.¹

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27 ¹ The Court notes that the Magistrate Judge concluded in her Report that she did not
28 have enough information to determine preliminarily whether Claim 2 had been
properly exhausted. [Dkt. 13 at 4-5.]

1 Accordingly, **IT IS ORDERED** that:

2 (1) the First Amended Petition is a mixed petition under *Rose v. Lundy*, 102
3 S.Ct. 1198 (1982);

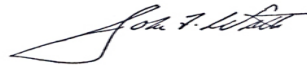
4 (2) Claims 3 and 4 of the First Amended Petition are dismissed without
5 prejudice; and

6 (3) the First Amended Petition is deemed amended to delete Claims 3 and 4.

7 **IT IS SO ORDERED.**

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9 DATE: October 21, 2015



JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

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